UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/NGO/19
31 January 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Lawyers Committee for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 January 1992]

1. The Government of the Islamic Republic of Iran has long made clear its desire that international monitoring of the human rights situation in the Islamic Republic should not continue. The Government's primary objection seems to be that the conclusions of the Special Representative and the voting within the Commission are politically motivated. The Iranian Foreign Minister, Ali Akbar Velayati, told the Special Representative in January 1991 that "the country could not tolerate" such monitoring for long. The Special Representative has made clear that the aim of international monitoring is "to encourage the fulfilment of international obligations relating to human rights". The Lawyers Committee fully supports this approach which sets the context in which Iran's human rights performance should be assessed.

2. Iran has made a number of commitments to the international community, through the Special Representative, to implement reforms leading to compliance with international human rights standards.

The right to legal counsel

3. For example, the Government has stated its commitment to providing everyone facing criminal charges with access to legal counsel in accordance with article 14 (b) and (d) of the International Covenant on Civil and Political Rights (ICCPR). Although the Government had written to the Special Representative in January 1991 giving the impression that legislation was already in force, a new law relating to the right to legal counsel did not come into effect until September 1991.

4. Article 2 of the new law states:

> "If a court denies the right of a party [to a law suit] to appoint a counsel, and without the presence of the counsel issues its verdict, the verdict shall be considered null and void."

On paper, this represents a powerful incentive for courts to comply with the legal requirement to permit defendants to be represented by a lawyer. In practice, defendants continue to be denied access to legal counsel, particularly in trials before Islamic Revolutionary Courts where many trials of a political nature are held.

5. In a meeting with the Lawyers Committee for Human Rights in November 1991 the Judicial Deputy to the Head of the Judiciary, Dr. Mehrpour, further qualified the practical meaning of this statutory right to legal counsel. He said that legal representation was voluntary, and that courts would not appoint attorneys in all cases, only in serious cases. The Judicial Deputy acknowledged that some types of court, including Revolutionary Courts, habitually refused to allow legal counsel to appear before them. The Lawyers Committee is not aware of any case before a Revolutionary Court where defendants have been represented by counsel. The Iranian Government has been asked to provide the Special Representative with transcripts of proceedings before Revolutionary Courts which would demonstrate their compliance, or otherwise, with international standards. These transcripts have not been made available.

The "Letter by the 90" case: observance of due process standards

6. In the well-known case of the "Letter by the 90", the defendants were not permitted access to legal counsel at any stage of their detention or trial. The Special Representative has stated that he views the treatment of these prisoners as "a test case for the application of the rules of due process". It is instructive to examine the procedures followed in this case involving well-known and respected people in Iranian society, several of whom had served in the transitional government of Mehdi Bazargan in 1979, the first Government of the Islamic Republic.

7. Nine people were eventually tried in secret in July 1991. It was several months before details of the sentences emerged. One of the prisoners received

a six-month prison sentence. Two received two-year sentences and the remaining six received three-year sentences. In addition, each of the prisoners was sentenced to receive between 10 and 30 lashes. According to our information, the sentences of flogging have not been carried out. The nine defendants were held in pre-trial detention for over a year from the time of their arrest in June 1990 with no opportunity to challenge their detention before a judicial authority, contrary to article 9 (4) of the Covenant.

8. The prisoners did not have access to legal counsel at any stage of their pre-trial detention, contrary to article 14 (3) (b) of the Covenant. None of them were represented by lawyers at their trials which were held in camera, contrary to articles 14 (1) and 14 (3) (d) of the Covenant.

9. The charges against the nine remain vague, and it would appear that the reason for their prosecution was their non-violent expression of public criticism of the policies of the Iranian Government. Even after being sentenced, the prisoners reportedly remained under pressure to sign public statements of repentance for their views and activities. Seventy-six-year-old lawyer Ali Ardalan was reportedly transferred after the trial to a Ministry of Intelligence detention centre in central Tehran where he was held in solitary confinement. In November he was admitted to hospital suffering from kidney failure and heart problems. He is currently believed to have been permitted to return home on grounds of poor health. Another prisoner, Nezamedin Movahed, was also hospitalized. The other seven prisoners are serving their sentences.

10. The conduct of this case, which attracted international attention, does not inspire confidence that basic safeguards against abusive detention, mistreatment and torture during pre-trial detention and for fair trial procedures are in place. Indeed, this case has shown a number of the Iranian Government's statements about its compliance with international standards not to be borne out in practice. The Government had, for example, assured the Special Representative that "revolutionary courts meet openly where the public and the representatives of the media are allowed to participate". The Government also claimed that "the criterion is the innocence of the defendant until otherwise proved". Prior to the trial the office of the Islamic Revolutionary Prosecutor issued a statement saying that the groups with which the defendants were associated, "functioned as a fifth column, serving the objectives of the enemies of the Islamic revolution and the Iranian nation". Such statements detracted from the right to be presumed innocent.

Detention procedures

11. Competing authorities with the power to detain have contributed to arbitrary treatment and an absence of accountability in the detention process. Detentions may be carried out and detainees may be held in custody by a variety of law enforcement agencies under the jurisdiction of different ministries. The police, gendarmerie and Islamic Revolutionary Committees recently merged into one police force, under the authority of the Ministry of the Interior. The Islamic Revolutionary Guard Corps (Pasdaran) has its own ministry. The Ministry of Intelligence also has some involvement in the incarceration and interrogation of prisoners. This organizational complexity detracts from the provisions of safeguards for detainees in accordance with

international standards. There appears to be no effective limit to pre-trial detention in Iran.

Safeguards Against Torture

12. Another important undertaking given to the Special Representative in January 1991 was that the International Committee of the Red Cross (ICRC) would be permitted to visit prisoners in all types of Iranian prisons. This would be a positive measure contributing to minimizing the risk that prisoners may be tortured or ill-treated. Such access still has not been granted to the ICRC. Other structural safeguards against torture are not in place. Prisoners are routinely held for lengthy periods in incommunicado detention. The Lawyers Committee knows of no cases where members of the security forces involved in torture of prisoners have been prosecuted, or even investigated, despite evidence of widespread torture having taken place throughout the 1980s.

The death penalty

13. There has been no reduction in the mass execution of people convicted of criminal offences. Over 700 executions in criminal cases were reported in the Iranian media in 1991, a figure similar to the 750 reported in 1990. Minimum guarantees for fair trial are absent from these often hasty proceedings. The excessive use of the death penalty is itself contrary to international standards which allow that the death penalty should be imposed only exceptionally.

14. In our view a framework for the effective safeguarding of fundamental human rights in Iran is lacking. Statements of intent from the Government are no substitute for verifiable reform of policies. Only through the establishment of such a framework will the purpose of international monitoring, "to bring about fulfilment of international human rights obligations", be completed. The Special Representative has made valuable progress in engaging the Iranian Government in a dialogue on compliance with its obligations under international law. He should be permitted to build on this foundation through the continuation of monitoring, not motivated by the desire to see stigma attached to the Government of the Islamic Republic of Iran, but rather with the constructive intention of better ensuring respect for the fundamental human rights of the Iranian people. This vital task is not yet completed. Monitoring must be allowed to continue until a framework for effective human rights protection is in place. Only then can the Special Representative's mandate be said to have been fulfilled.